

# HOUSE . . . . . No. 4347

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## The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, July 30, 2012.

The committee on Ways and Means, to whom was referred the Senate Bill authorizing governmental bodies to enter into contracts for the inspection, maintenance, repair or modification of water storage facilities (Senate, No. 2126), reports recommending that the same ought to pass with an amendment striking all after the enacting clause and inserting in place thereof the text contained in House document numbered 4347.

For the committee,

BRIAN S. DEMPSEY.

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In the Year Two Thousand Twelve  
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By striking out all after the enacting clause and inserting in place thereof the following:—

1 SECTION 1. Chapter 40 of the General Laws is hereby amended by adding the following 10  
2 sections:

3 Section 61. As used in this section and sections 62 to 69, inclusive, the following words shall  
4 have the following meanings unless the context clearly requires otherwise:

5 "Governmental unit", a city, town, county, water district or wastewater district, municipal water  
6 and sewer commission or regional water and sewer district commission established under chapter  
7 40N or by special act or an independent water and sewer commission; provided, however, that  
8 the term "governmental unit" shall not include the Massachusetts Water Resources Authority.

9 "Local legislative body", in a city, the city council, in a town, the town meeting or as otherwise  
10 more specifically defined by the municipal charter, municipal water and sewer commission or  
11 regional water and sewer district commission established under chapter 40N or by special act, in  
12 a district, the district meeting, in an independent water and sewer commission, the  
13 commissioners.

“Water storage facility”, an above or below-ground facility or tank, standpipe, water tower or other building or structure used to store water for, without limitation, public drinking water supply and fire protection.

Section 62. Pursuant to sections 61 to 69, inclusive, a governmental unit may enter into contracts for the inspection, maintenance, repair or modification of a water storage facility to maintain adequate services to users and ensure that the water storage facility is in compliance with federal, state and local laws. All contracts shall be awarded in accordance with section 6 of chapter 30B and approved by two-thirds vote of the local legislative body of the governmental unit. An approved contract may provide that the governmental unit: (i) may make annual payments to fund capital modifications, repairs or installation of equipment and systems at a water storage facility that have been completed or are to be completed pursuant to the terms of the request for proposals; provided, however, that costs shall be amortized over a period that shall not be longer than the useful life of the modifications or repairs or the equipment and systems installed; and (ii) may make payments for future capital modifications, repairs or installation of equipment and systems or a second interior or exterior coating at a water storage facility pursuant to the terms of the request for proposals based on estimated costs of such capital modifications, repairs or installation of equipment and systems at a water storage facility, only if the payments for the full accumulated amount are guaranteed by a bond, letter of guaranty, or other form of guaranty to be submitted on an annual basis and approved by the governmental body for the 100 percent accumulated amount.

Section 63. (a) A contract awarded under section 62 may provide for a term, not exceeding 15 years, and an option for renewal or extension of inspection, maintenance repair or modification services for 1 additional term not exceeding 5 years. When a contract is to contain an option for

renewal or extension, the solicitation shall include notice of that provision. A renewal or extension shall be at the sole discretion of the governmental body under the terms and conditions of the original contract. Subject to the provisions of paragraph (b), a contract awarded under section 62 shall contain a provision stating that the governmental unit may terminate the contract upon 90 days written notice.

(b) A contract entered into under section 62 may provide that the governmental unit's obligation under the contract for payment of the annual costs to inspect, maintain, repair, or modify a water storage facility shall be subject to appropriation, provided, however that a governmental unit shall not be exempt from liability for the payment of the amounts amortized for completed capital modifications, repairs or installation of equipment and systems at a water storage facility. Costs shall be amortized over a period that shall not be longer than the useful life of the modifications or repairs or the equipment and systems installed. A governmental unit's payment obligation for any inspection, maintenance, repair or modification services shall be contingent upon the contractor's performance of the services under the terms of the contract. A contract entered into pursuant to this section shall include the independent professional engineer's report that was used as the basis of the solicitation and include a breakdown of the portion of the annual fee that is allocated to inspection, maintenance, operation, testing and ordinary repair which shall be subject to the provisions concerning annual appropriation in this section, and the portion of the annual fee that is attributable to capital modification, capital repairs or installation of equipment and systems at a water storage facility for which the amount of the lump sum cost of such capital modification, capital repairs or installation of equipment and systems at a water storage facility has been amortized over the life of the contract. In addition, if the local legislative body of a governmental unit votes to make payments for future capital

modifications, repairs, installation of equipment and systems or a second interior or exterior coating, a contract entered into pursuant to this section shall include a schedule of the payments to be made based on the estimated costs of such future capital modifications, repairs, installation of equipment and systems or a second interior or exterior coating as submitted by the selected offeror in response to the request for proposals, which shall be used to determine the full accumulated amount to be guaranteed. In the event of a termination, the amounts held for future capital modifications, capital repairs or installation of equipment and systems or a second interior or exterior coating, shall be refunded to governmental unit in accordance with the terms and conditions of the request for proposals

(c) A contract entered into under section 62 may provide for any activities deemed necessary to carry out the purposes authorized in sections 61 to 69, inclusive, which may include, but shall not be limited to, equipment installation and replacement, studies, permitting, design and engineering, capital modification, capital repairs, painting, ordinary repairs and maintenance, and the furnishing of all related material, supplies and services required for a water storage facility and the management, maintenance and repair of and improvements to the facility. In the event that the contract and any lawfully executed extension of the initial term includes payments for future capital modifications, repairs, installation of equipment and systems or a second interior or exterior coating, prior to proceeding the governmental unit shall seek the consultation of a professional engineer or independent certified tank consultant to complete an independent review of the proposed scope in relation to the condition of the water storage facility. The engineer or tank consultant shall prepare a written report to advise the governmental unit on proceeding with the contractor's proposal.

82 Section 64. The chief procurement officer of a governmental body shall solicit proposals in  
83 conformance with section 6 of chapter 30B. Information from the governmental unit shall  
84 contain a full and complete description of the condition of the water storage tank as written by an  
85 independent professional engineer. The scope of services shall contain a detailed description of  
86 the services to be provided by the selected proposer.

87 A contract pursuant to sections 61 to 69 shall specifically state that the offeror and any  
88 subcontractor under the offeror shall comply with all federal and state occupational health and  
89 safety requirements applicable to the activities provided for in the contract.

90 Section 65. The chief procurement officer of a governmental unit shall award the contract to the  
91 most advantageous proposal from a responsible and responsive offeror taking into consideration  
92 price and the evaluation criteria set forth in the request for proposals; provided, however, that  
93 such proposal shall be in full compliance with all applicable requirements of federal state and  
94 local law, including section 26 to 27H of chapter 149. The governmental unit shall provide  
95 written notice to the selected offeror within the time for acceptance specified in the request for  
96 proposals. The governmental unit and the offeror may extend the time for acceptance by mutual  
97 agreement. If the contract award is made to an offeror who did not have the lowest overall price  
98 proposal, then the chief procurement officer shall publish a timely written statement of reasons  
99 for its selection in the central register.

100 Section 66. A contract awarded under sections 61 to 69, inclusive, shall be subject to such terms  
101 and conditions as the governmental unit shall determine to be in its best interest. The selected  
102 offeror shall furnish to the governmental unit performance bonds, payment bonds, or other forms

103 of security for the selected offeror's obligations, and insurance, satisfactory to the governmental  
104 unit.

105 Section 67. The department of environmental protection may issue project approval certificates  
106 with respect to capital project costs identified with a contract procured by a governmental unit  
107 under sections 61 to 69, inclusive, for facilities improvements.

108 Section 68. A contract made in violation of any provision of sections 61 to 69, inclusive, shall be  
109 void and the governmental unit shall make no payment under any such contract. Minor  
110 informalities shall not render a contract void.

111 Section 69. Public notice of the request for proposals shall be published in the central register  
112 pursuant to section 20A of chapter 9 at least 30 days before the time specified for receipt of  
113 proposals in the request for proposals.